

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Indian Health Service

Refer to: DPM

ALBUQUERQUE AREA INDIAN HEALTH SERVICE CIRCULAR NO. 89-03

APPROVING TESTIMONY IN CERTAIN MEDICAL AND PERSONNEL CASES

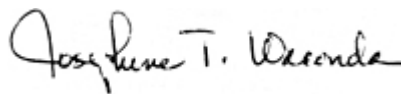
Sec.

1. Purpose
2. Background
3. Policy
4. Responsibilities
5. Procedures
6. Supersession

1. PURPOSE. This policy is to establish the procedures for permitting IHS employees to provide factual testimony in two very limited instances of medical and personnel cases where there are no PHS policies issued. This guide is to be used in conjunction with the Delegation of Authority for Testimony in Private Litigation.
2. BACKGROUND. Delegation of Authority for Testimony in Private Litigation was previously unrestricted by PHS except for testimony of expert witnesses which had to be approved by Assistant Secretary of Health (ASH). The new change in regulation, 45 CFR Part 2, prohibits PHS employees from testifying in private litigation unless such testimony has been approved by ASH. This regulation was designed to provide greater control over approval of testimony in private litigation.
3. POLICY. This is to define the authorities of approval of testimony in private litigation. The decisions and judgments of management should be based on the items listed below upon advice from the Regional Attorney:
 - A. Minimum of disruption of employee's official duties including loss of time, essential coverage, etc.;
 - B. Weighing the burden of complying with the subpoena against the burden of resisting the subpoena;
 - C. Based on the actual provision of medical care or examination or direct knowledge of the personnel matter which is acquired in the course of performing official duties;
 - D. The availability of information under the Freedom of Information Act and the release of information under the Privacy Act;
 - E. Applicability of the Privacy Act over most medical and records; and

Distribution:	All Indian Health Manual Holders	11/27/89
	All Albuquerque Area Program Managers	
	Service Unit Personnel Management Specialists	

- F. Provisions of HHS Instruction 297-1-B.3.k which provides for the release of protected personnel information without the consent of the subject individual "...pursuant to the order of a court of competent jurisdiction".
4. RESPONSIBILITIES. The responsibility for proposing and reviewing the requests for approval of testimony or documents pursuant to a court order or subpoena should be conducted as follows:
- A. Service Unit Directors/Associated Directors are the proposing officials for the medical and personnel matters.
 - B. Area Director is the reviewing official and advice will be provided by the Deputy Director/Chief Medical Officer on medical matters and Director, Division of Personnel Management on personnel matters. The Area Director before finalizing the decision will be responsible for coordinating consultation with the Regional Attorney.
5. PROCEDURES. The direct testimony on behalf of a private party with respect to the employee's duty status and entitlements in terms of whether the testimony is or is not in an official capacity. The following conditions must be met before the employee is given approval to testify:
- A. Private litigation in which the Government is not a party;
 - B. Testimony or release of documents on medical or personnel matters for which the employee has direct knowledge;
 - C. Testimony is compelled by valid subpoena or other compulsory process;
 - D. When the testimony is required, supervisors are required to approve either of the following:
 - (1) Testimony in an official capacity is official duty with the government paying travel expenses; or
 - (2) Testimony when not in an official capacity requires annual leave, leave without pay (LWOP) and the government does not pay travel expenses.
6. SUPERSESSION. This is in effect until it is superseded.



11/13/89

Josephine T. Waconda
Assistant Surgeon General
Director, Albuquerque Area
Indian Health Service

